

REMARKS

I. Formalities

Claims 26-31 have been elected herein, with traverse.

II. Response to the Restriction Requirement

A restriction of Applicants' claims was required under 35 U.S.C. §121 to one of the following species of the claimed invention:

1. Embodiment 1 of FIGs. 1-4 (claims 1-13);
2. Embodiment 2 of FIGs. 5-9 (claims 18-25);
3. Embodiment 3 of FIGs. 10-15 (claims 26-31); and
4. Embodiment 4 of FIGs. 16-17 (claim 32).

As required by the Office Action, Applicants elect, subject to a traverse that follows hereafter, to prosecute embodiment 3 of FIGs. 10-15, i.e., claims 26-31.

Applicants traverse the subject restriction requirement on the grounds that maintaining the Restriction Requirement and forcing Applicants to file a divisional application to include the non-elected claims only serves to increase the workload upon the U.S. Patent and Trademark Office and to increase the expenses incurred by Applicants. Accordingly, maintaining the present Restriction Requirement benefits no one.

Also, it is noted that restriction is never mandatory and is discretionary under 35 U.S.C. §121 only when "two or more independent and distinct" inventions are claimed. It is respectfully submitted that the restriction requirement should be removed because there is not even alleged a valid ground under 35 U.S.C. §121 for exercising the Commissioner's discretion in requiring the restriction.

The provisional election of the claims of embodiment 3, i.e., claims 26-31, is hereby affirmed. However, the Restriction Requirement is respectfully traversed, and reconsideration and withdrawal of the requirement for restriction is respectfully requested.

CONCLUSION

Based on the foregoing remarks, it is respectfully submitted that the Restriction Requirement should be removed. If there are matters that can be discussed by telephone to further the prosecution of this application, Applicants invite Examiner Pham to call the undersigned attorney at the Examiner's convenience.

No fees are believed to be due with this Response to Office Action. However, the Commissioner for Patents is hereby authorized to charge any fees due by reason of this paper, or credit any overpayment, to Account No. 02-4467.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kenneth A. Nelson". The signature is fluid and cursive, with the first and last names being more prominent.

BRYAN CAVE LLP
Two North Central Avenue
Suite 2200
Phoenix, AZ 85004-4406

Kenneth A. Nelson
Attorney for Applicants
Reg. No. 48,677
Tel. (602) 364-7000



CERTIFICATE OF EXPRESS MAILING UNDER 37 C.F.R. 1.10.

I hereby certify that this document (and any referred to as being attached or enclosed) is being deposited with the United States Postal Service as "Express Mail Post Office to Addressee" service, mailing label No. **EV478773785US on December 2, 2004** and addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Name:

Printed Name:

Bradley Brown